Enterprise Masonry Corp. *and* Laborers Local Union 199, Laborers International Union of North America, AFL–CIO. Case 5–CA–30421

March 15, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND MEISBURG

On January 17, 2003, Administrative Law Judge Richard A. Scully issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Enterprise Masonry Corporation, Elsmere, Delaware, its officers, agents, successors, and assigns shall take the action set forth in the Order.

Dated, Washington, D.C. March 15, 2004

Robert J. Battista,	Chairman
Wilma B. Liebman,	Member
Ronald Meisburg,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Elicia Watts, Esq., for the General Counsel.
Robert D. Ardizzi, Esq., of Spring House, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

RICHARD A. SCULLY, Administrative Law Judge. Upon a charge filed on April 30, 2002, by Laborers Local 199, Laborers International Union of North America, AFL–CIO (the Union), the Regional Director for Region 5, National Labor Relations Board (the Board), issued a complaint on June 28, 2002, alleging that Enterprise Masonry Corp. (the Respondent) had committed certain violations of Section 8(a)(3) and (1) of the National Labor Relations Act (the Act). The Respondent filed a timely answer denying that it had committed any violation of the Act.

A hearing was held in Wilmington, Delaware, on October 21 and 22, 2002, at which the parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and argument. Briefs submitted on behalf of the General Counsel and the Respondent have been given due consideration. Upon the entire record, and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, the Respondent was a Delaware corporation with an office and place of business in Elsmere, Delaware, engaged as a masonry contractor in the construction industry doing commercial construction. During the 12-month period preceding June 28, 2002, in the conduct of its business operations, the Respondent received at its Elsmere facility goods valued in excess of $50,000 directly from points outside the State of Delaware. The Respondent admits, and I find, that at all times material, it was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent admits, and I find, that at all times material the Union was a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The Respondent is a masonry contractor operating in Delaware and surrounding states. The project involved in this matter was the construction of the Smyrna Middle School (SMS) in

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] The Respondent contends that it informed the general contractor of its intention to lay off laborers on February 20, 2002, before it learned of the employees' union activity. The record belies that contention. The judge implicitly credited the testimony of Union Representative Robert DeClementi that he spoke with some of the Respondents' laborers about the Union during jobsite visits in January. Foreman Ed Hardy observed another jobsite meeting between DeClementi and the employees during their lunchbreak on February 20. The Respondent presented no evidence showing that its alleged conversation with the general contractor occurred prior to that break. In any event, the judge expressly rejected the "vague, self-serving testimony" of Hardy and Gene Cannatelli, the Respondent's vice president, concerning the need for a layoff, and the judge ultimately found that the Respondent's asserted reasons for the layoff were pretextual. Chairman Battista notes that there is no evidence that the Respondent was aware of the Union's jobsite visit in January. Accordingly, he does not rely upon that visit to show knowledge.

Smyrna, Delaware, which commenced in the latter part of 2001 and was completed in September 2002. The general contractor on the project was Barkley, White, and Skanska and the Respondent had a subcontract to provide all masonry work except concrete. The Respondent's bricklayers are unionized, but its laborers are not.

During January 2002,[1] Local 199 representative Robert DeClementi visited the SMS jobsite and talked with some of the Respondent's laborers about the Union. On the afternoon of February 19, a group of laborers met with him at the Smyrna Diner. They discussed union representation and union authorization cards were passed out. On the following day, DeClementi went to the SMS jobsite and met with a group of laborers during their lunch period near a dumpster at the jobsite. He passed out union t-shirts and stickers which some employees put on and he had a petition for employees to sign. This meeting was observed by foreman Ed Hardy who was standing by the Respondent's trailer. After work that afternoon, DeClementi met with employees at a pizza restaurant, he discussed presenting the petition to the Respondent, and he asked for volunteers to do so. On the following morning, DeClementi, another union organizer, and employees Thomas Glennon and William Smith approached Hardy as he arrived at the jobsite. Glennon handed the petition, which stated that the undersigned employees wanted to be represented by the Union, to Hardy and read it aloud to him. Hardy responded that it was not his decision and that he would call company Vice President Eugene Cannatelli.

Cannatelli arrived at the jobsite at about 8:30 a.m. DeClementi showed him the petition and said that the employees wanted to be represented. Cannatelli said that he could not make that decision and had to talk to his partner. Later that morning, Union Representatives DeClementi, Gurvis Miner, and John Mancini met with Hardy, Cannatelli, and company President John Aull in the Respondent's trailer at the jobsite. DeClementi showed Aull a copy of the petition and said that a majority of the employees wanted the Union to represent them. After some discussion, Aull said that the job had already been bid and that the Respondent would not recognize the Union.

On the afternoon of February 21, the Respondent laid off laborers John Holland, Thomas Glennon, Kyle Tucker, and Tyrone Sayles. It laid off laborer William Smith on the morning of February 22. With the exception of Holland, all of these employees had signed the petition that the Respondent received on the morning of February 21, and had worn union t-shirts and stickers while working at the SMS jobsite that day.

The complaint alleges that the four union supporters were laid off because of their union activity in violation of Section 8(a)(3) and (1) of the Act. The Respondent contends that the layoff was necessitated by the fact that it had too many laborers on the job at that point and that the layoff was planned and the individuals to be laid off were chosen before it had any knowledge of union activity on the part of its laborers.

[1] Hereinafter, all dates are in 2002.

Analysis and Conclusions

In cases where an employer's motivation for a personnel action is in issue, it must be analyzed in accordance with the test outlined by the Board in *Wright Line*, 251 NLRB 1083 (1980) enfd. 662 F. 2d 800 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). Under *Wright Line*, the General Counsel must persuade the Board that animus toward protected activity on the part of employees was a substantial or motivating factor in the employer's decision. Once that has been done, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of protected activity on the employees' part. *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996). The General Counsel's initial burden is met by proof of protected activity on the part of the employees, employer knowledge of that activity, and employer animus toward it. *W.R. Case & Sons Cutlery Co.*, 307 NLRB 1457, 1463 (1992).

There is no dispute but that the alleged discriminates engaged in protected activity by seeking representation by the Union, by signing union authorization cards, by signing and presenting a petition asking the employer to recognize the Union as their collective-bargaining representative, by wearing union t-shirts and stickers on the SMS jobsite, and by meeting with union representatives at the jobsite.

There is also no question but that the Respondent was aware of the fact that its employees were engaging in this activity. During the lunchbreak on February 20, several laborers met openly with DeClementi at the SMS jobsite. On the morning of February 21, it received the petition signed by 13 laborers which stated that they wanted the Union to represent them. Of the five laborers who were laid off that day or the next, four had signed the petition. Throughout that day the Union maintained a picket line at the entrance to the SMS jobsite which featured large inflatable rats. At least two of the alleged discriminates, Glennon and Smith were at the picket line during their lunchbreak. Glennon testified that Hardy drove by while he was there and that they waved to each other.

Direct evidence of unlawful motivation is seldom available and it may be established by circumstantial evidence and the inferences drawn therefrom. E.g., *Abbey Transportation Services*, 284 NLRB 698, 701 (1987); *Pete's Pic-Pac Supermarkets*, 707 F.2d 236, 240 (6th Cir. 1983); *Shattuck Denn Mining Corp.*, 362 F. 2d 466, 470 (9th Cir. 1966). The timing of an employer's action can be persuasive evidence of its motivation. *Masland Industries*, 311 NLRB 184, 197 (1993); *Limestone Apparel Corp.*, 255 NLRB 722, 736 (1981). Here, the layoffs began within hours of the time the Respondent received the petition from its laborers requesting recognition of the Union. Moreover, four of the five laborers who were laid off had signed the petition.[2] Also, upon being presented with the demand for recognition, the Respondent made it clear that the SMS job had already been bid and that it would not pay a higher wage rate. I find that the General Counsel has met the prima facie burden imposed by *Wright Line.*

[2] The fifth laborer laid off, John Holland, was rehired by the Respondent at the SMS job the following week.

The Respondent contends that the layoff decision was made before it had any knowledge of union activity on the part of the laborers. It asserts that in February the masonry work had reached a stage where the building was being "buttoned up," the exterior walls were up and the building was being enclosed and heated so that the various trades could perform their work inside. This meant the Respondent would be concentrating its work force and would need fewer laborers to support the bricklayers than when they had been spread throughout the project. During the second week of February, Cannatelli decided that there were too many laborers on the project and he told Hardy to lay off six or seven of them. He left it to Hardy to select those to be laid off. By Monday, February 18, Hardy had done so, but they were permitted to work out the week. On Thursday, Cannatelli came to the SMS site and Hardy gave him the names of those he had selected. He called in the names to the company's bookkeeper and once the amount of their wages had been determined, he wrote out checks and gave them to Hardy to distribute.

The Respondent relies on the vague, self-serving testimony of Cannatelli and Hardy to establish that the layoff was necessary because there were too many laborers on the job and that it had been decided upon prior to the time it learned of the laborers' interest in being represented by the Union. However, its records concerning the manpower on the SMS job immediately before and after the layoffs do not support that testimony. According to those records, during the week ending February 17, the week Cannatelli allegedly told Hardy that six or seven laborers should be laid off, there were 23 laborers on the job (GC Exh. 2f). The following week ending February 24, in which the layoffs occurred, there were 27 laborers on the job (GC Exh. 2g). The next week, ending March 3, there were 24 (GC Exh. 2h), the week after that, ending March 10, there were 26 (GC Exh. 2i) and the week ending March 17, there were 24 (GC Exh. 2j). Equally important, the records indicate that the total number of hours laborers worked did not diminish significantly after the layoffs. During the week ending February 17, laborers worked only 634 hours. The week ending February 24, laborers worked a total of 914 hours, the week ending March 3, a total of 864 hours, the week ending March 10, a total of 909.5 hours, and the week ending March 17, a total of 854.5 hours. The fact that an employer lays off union supporters for alleged economic reasons but then replaces them is clear evidence that its asserted reason is pretextual. E.g., *Bay Metal Cabinets*, 302 NLRB 152, 173 (1991); *Jumbo Produce*, 294 NLRB 998, 1007 (1989).

Even more severely undercutting the Respondent's claim that there were too many laborers on the job and that the layoff had been decided upon almost a week before it occurred is the fact that, on Monday, February 18, Hardy hired laborer William Smith, who had been coming to the SMS jobsite seeking employment almost daily for about 2 weeks. It would obviously make little sense for Hardy to take on a new laborer if he had just been told by his boss that there were too many on the job and, particularly, if he had already selected a number to be laid off a few days later.

The Respondent points to the fact that at a meeting on February 20, Cannatelli told the general contractor's project superintendent, Ralph Walker, that it was going to have a layoff of laborers as evidence that it was planning to reduce the number of laborers on the job before it learned of any union activity. However, the testimony of Walker was that Cannatelli said that he had laborers coming in from other jobs that were winding up who would replace anyone who was laid off and that there would be no reduction in the total number on the SMS job. As Walker put it, "they were not going to cut back, and we did not want them to cut back." Cannatelli admitted telling Walker this. "I said no, we're laying [off] laborers, and I have people coming from other jobs that it will probably be filling right back up."

The Respondent also contends that the fact that John Holland, a laborer who had not signed the petition for recognition or openly engaged in any union activity that week, was laid off is proof of its lack of antiunion motivation. I do not agree. First, it is not unknown for an employer to include nonsupporters of a union in a layoff to mask its true intent. Here, all the others who were laid off were open supporters of the Union. Second, Holland was put back to work by Hardy the following Monday. Holland did not testify and the Respondent's explanation, based on the uncorroborated testimony of Hardy, that Holland came to Hardy and apologized for his poor work performance and was put back to work, is not persuasive. The purported reason for the layoff was that there were too many laborers on the job, not Holland's shortcomings as a worker. Moreover, the union supporters who were laid off were not told why they had been selected nor given any reason to believe they could get their jobs back a few days later. In any event, the fact that nonsupporters of a union are also included in a layoff does not preclude a finding that it was unlawful. *Vemco, Inc.*, 304 NLRB 911, 913 (1991). Notwithstanding the fact that Cannatelli allegedly told Hardy to lay off six or seven laborers, in fact, since Holland was reinstated only four laborers were actually laid off and all were supporters of the Union.

The way the Respondent handled the layoffs also belies its claims that its laborers' union activity had nothing to do with it. According to Cannatelli, its usual practice is that when a laborer is told that he is laid off he is also told to return and pick up his paycheck the following week. However, in this case, on Thursday, after arriving at the SMS jobsite to meet with the Union's representatives, Cannatelli called the company bookkeeper, got the payroll figures, and wrote out paychecks which were then given to the four laborers being laid off that day. He admitted that he did things differently in this instance because the presence of the Union caused him to be "afraid I was going to have a problem and I wanted to make sure all my T's were crossed." Yet, according to his testimony, he did not know that any of those selected to be laid off were supporters of the Union. I did not believe him. I find it more likely that he feared a "problem" because he knew that 80 percent of those being laid off had signed the petition. He may also have wanted to avoid having them come back to the jobsite a week later to pick up their paychecks where they might have interacted with other prounion employees. I find that the Respondent's departure from it usual layoff practice in response to the Union's organizing campaign is additional evidence of its unlawful motivation. *JAMCO*, 294 NLRB 896, 905 (1989).

There is no merit in the Respondent's arguments that union activity could not have been a factor in the decision to lay off the laborers because they had been selected and their names submitted to the timekeeper before the meeting with the union representatives on February 21, or that Cannatelli did not look at the names on the petition that DeClementi handed him at their meeting. The fact is that, when Hardy first arrived at the jobsite that morning, he was given the petition by union representatives and laborers Glennon and Smith and it remained with him throughout the morning. Glennon also read the petition to Hardy. I find it difficult to believe that, after receiving a call from Hardy to come to the jobsite to meet with the Union, Cannatelli would not have looked at the petition (which was the reason he was called) when he got there. In any event, it was Hardy who selected the employees to be laid off and he had the petition with the names of the union supporters in his possession long before he gave the names he had chosen to Cannatelli. Hardy had also observed the meeting between the laborers and Union Representative DeClementi near the dumpster at the SMS jobsite on February 20. Kyle Tucker, one of those laid off, credibly testified that he had mentioned his interest in the Union to Hardy during his break on February 20, and asked for his advice, but Hardy just shrugged and walked away.

I also find that the Respondent has failed to establish that the four union supporters would have been laid off even in the absence of union activity on their part. Based on the testimony of Hardy, it asserts that Kyle Tucker was selected for layoff because of his poor work performance. Hardy testified that another foreman, Barry Jones, actually selected Tucker. According to Hardy, a couple of weeks before the layoff Jones mentioned to him that Tucker would "disappear sometimes," and that "every time he [Jones] looked around, he couldn't find him [Tucker]." As a result, Hardy spoke to Tucker and told him "you just can't disappear and stuff like that." Tucker testified that, in January during his second week on the job, Hardy had told him that Jones had seen Tucker standing around with his hands in his pockets. Tucker said that it was a cold day, that he did not have any gloves, and that at a time when all of the bricklayers he was servicing had everything they needed, he put his hands in his pockets for about 30 seconds. He said that he went to Jones and apologized and Jones said that he understood. Hardy claimed that when Tucker was laid off he told Tucker that he had tried to warn him that he had to pull his own weight and do things. However, Tucker credibly testified that he had never been disciplined while on the SMS jobsite and that a couple of times Hardy had actually complimented him on his work and told him he was doing a good job. Tucker also testified that at the time he was laid off Hardy gave him no reason for his selection except that work was slowing down. I found Tucker to be a believable witness and credit his detailed descriptions of these incidents over Hardy's vague, cryptic account. Jones, whom Hardy claimed made the decision to lay off Tucker, did not testify. Jones' absence was not explained and there is no reason to believe he is not favorably disposed toward the Respondent. I infer that his testimony would not have supported its position.

Hardy testified that he selected Glennon for layoff because he was missing time, had "an attitude problem," and did not get along with anyone with whom he worked. However, there is no evidence that he had ever discussed any of these alleged concerns this with Glennon. Glennon had worked for the Respondent at the Hyatt project in Cambridge, Maryland, from November 2001 until January 2001 when he left to take another job. He was rehired on the Hyatt job in September 2001 and worked there until the beginning of January 2002, when he was asked by his supervisor to go to the SMS job. Glennon admitted that he had missed some days on the SMS job but testified that he had never been told that was the reason for his being laid off. It is noteworthy that the week of the layoff Glennon was there every day in contrast to several other laborers that Hardy admitted had missed time that week but were not laid off. At the same time, Tyrone Sayles, who apparently had not missed a single day of work since being hired on January 28, was laid off. According to Hardy, Sayles was being used to clean up because he didn't catch on to the work as a mason tender. Hardy first implied that Sayles had been doing clean up work on the project that the Respondent wasn't required to do. However, when asked if once Sayles was laid off the Respondent ceased cleaning up, his answer was: "There was always someone cleaning up. I mean a job that size, there's always somebody cleaning up." Apparently, Hardy was content to have Sayles do the cleaning up until he expressed an interest in representation by the Union. Thereafter, his employees had to clean up after themselves.

The Respondent's evidence concerning the reason for its decision to lay off William Smith and when it was made is confused and contradictory. Smith, who had previously worked for the Respondent at other jobsites and had once voluntarily quit its employ, was hired on Monday, February 18. He was hired even though Cannatelli had purportedly already told Hardy that he should select laborers to be laid off on Thursday, February 21. Smith was laid off on Friday, February 22. Hardy first testified that on Friday morning he saw Smith standing around on the jobsite. Hardy went to Smith and told him to "do something" even if he had to "kick a brick around." When Smith did not answer him, Hardy decided to lay him off. However, other evidence establishes that the Respondent made the decision to lay off Smith on Thursday, as it did the others. The Respondent's bookkeeper, Tammy Day, testified that Smith was one of the names she was given on Thursday morning by Cannatelli when he called to get the net pay amounts for those being laid off that day. However, she was unable to find his tax forms which she needed to compute the amount of his net pay. Smith credibly testified that during his lunch period on Thursday he had walked the picket line wearing a sign and was observed by Hardy. After lunch on Thursday, Hardy came up to him while he was working and said that he had been watching Smith standing around and that he needed to do something and should "kick a brick." Smith denied that he had not been working before this occurred. At that point, whether Smith was working or not didn't really matter because the decision to lay him off had already been made. It appears that Hardy was simply providing a spurious, after-the fact excuse for Smith's layoff.

I find that the Respondent has not established that these layoffs were necessitated by legitimate business reasons and that its proffered reasons for the layoffs are pretexts. I also find that

it has not established that Glennon, Smith, Sayles, or Tucker would have been laid off in the absence of union activity on the part of its laborers. Accordingly, I find that each of the layoffs violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. Enterprise Masonry Corp. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily laying off and discharging employees Thomas Glennon, Kyle Tucker, and Tyrone Sayles on February 21, 2002, and William Smith on February 22, 2002, and by failing to recall them.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily laid off and discharged employees, Thomas Glennon, Kyle Tucker, Tyrone Sayles, and William Smith, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Enterprise Masonry Corp., Elsmere, Delaware, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off, discharging, or otherwise discriminating against any employee for supporting Laborers Local 199, Laborers International Union of North America, AFL–CIO, or any other labor organization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Thomas Glennon, Kyle Tucker, Tyrone Sayles, and William Smith full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Thomas Glennon, Kyle Tucker, Tyrone Sayles, and William Smith whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Elsmere, Delaware, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 21, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 17, 2003

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT lay off, discharge, or otherwise discriminate against any of you for supporting Laborers Local 199, Laborers International Union of North America, AFL–CIO, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Thomas Glennon, Kyle Tucker, Tyrone Sayles, and William Smith full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Thomas Glennon, Kyle Tucker, Tyrone Sayles, and William Smith whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Thomas Glennon, Kyle Tucker, Tyrone Sayles, and William Smith and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

ENTERPRISE MASONRY CORP.